

STANLEY A. PHILLIPS ET AL.

IBLA 76-562

Decided July 22, 1977

Appeal from decision by the Acting Chief, Division of Cadastral Survey, Bureau of Land Management, dismissing a protest against acceptance of a plat of survey. Oregon Group No. 741.

Affirmed.

1. Secretary of the Interior--Surveys of Public Lands:
Generally--Surveys of Public Lands: Authority to Make
It is within the power of the Bureau of Land Management, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public land.
2. Surveys of Public Lands: Dependent Resurveys

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original corner.
3. Surveys of Public Lands: Dependent Resurveys

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the

resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

APPEARANCES: David P. Miller, Esq., Davies, Biggs, Strayer, Stoel, and Boley, Portland, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Stanley A. Phillips, Francis Cole, Terrence Sowa, Bert Miller and the Grant County Administrative School District No. 3 have jointly appealed from rejection of their demand for correction or withdrawal of a plat of survey affecting T. 13 S., R. 31 E., W.M., Oregon, accepted by the Bureau of Land Management on August 31, 1972. The appellants have charged that the resurvey casts doubt upon the true location of boundary lines of numerous landowners in Grant County, Oregon, including specifically all of themselves. They assert that the situation has created potential boundary disputes and trespass claims. They have offered specific objections to the reestablished points for the quarter-section corner between sections 26 and 35; the south quarter-section corner of section 35; the section corner common to sections 23, 24, 25, 26 (at the northeast corner of section 26); and the center west one-sixteenth corner of section 26.

The subject resurvey was executed pursuant to Special Instructions issued August 12, 1971, for section 26, T. 13 S., R. 31 E., W.M., in Group No. 741, Oregon. The field work was accomplished between August 12 and September 22, 1971, in accordance with the Manual of Instructions for the Survey of the Public Lands of the United States (1947) [hereinafter "1947 Manual"]. A protest was made to the BLM State Director for Oregon by the County Surveyor of Grant County, Oregon, against several section corners and quarter-section corners as established by the resurvey. No formal disposition was made of this protest, but the protestant was advised, after a conference, that BLM did not intend to change the location of any of the corner monuments established by the resurvey. The survey was approved and the plat accepted by the Director, BLM, on August 31, 1972. The plat of the resurvey was then returned to the State Director, Oregon, with instructions to file the plat officially upon receipt. The survey had been made to accommodate an applicant under the Mining Claim Occupancy Act, 30 U.S.C. § 701 (1970). Patent 36-73-0015 was issued November 24, 1942, to the MCOA applicant for lots 5, 6, 8 section 26, T. 13 S., R. 31 E., S.M., as delineated by this survey.

By letter of September 29, 1975, to Division of Cadastral Survey, BLM, Stanley A. Phillips, et al., demanded correction or withdrawal of the dependent resurvey in T. 13 S., R. 31 E., W.M., reciting objections to certain corners relocated by the resurvey.

The Division of Cadastral Survey, BLM, in a letter-decision, dated February 26, 1976, stated the demand from Phillips, et al., was being treated as a protest against the survey and then dismissed it. The BLM decision stated:

We have reviewed and evaluated the data submitted with your letter of September 29, 1975, as well as the official record of the aforementioned resurvey and subdivision of Section 26 and, accordingly, have concluded and find that: (1) the 1971 dependent resurvey, as approved and filed in 1972, was conducted in accordance with the rules of survey in force at that time as set forth in the U.S. Department of Interior, Bureau of Land Management, Manual of Instructions for the Surveying of Public Lands of the United States (1947); and (2) that the data submitted with your letter does not constitute clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the original lines of survey for Section 26, bearing in mind that it has long been established by the Department that surveys of the United States, after acceptance, are presumed to be correct, and will not be disturbed, except upon clear proof that they are fraudulent or grossly erroneous. No fraud has been alleged, and we have not been left with a definite and firm conviction that a mistake was committed.

Furthermore, you have not alleged any boundary conflict between private and Federal public lands and as you have indicated in your letter, the resurvey here involved cannot operate to establish or correct the boundaries or survey lines of the privately owned lands in the vicinity of the corner posts that you have questioned, the Department being without jurisdiction over land for which a patent has been issued. If any boundary conflicts should develop among private landowners, they should be resolved either amicably, through agreement, or on the basis of proceedings initiated in the Oregon courts.

This appeal followed, together with a request for hearing before an Administrative Law Judge on the issues of fact in dispute.

On April 5, 1977, the Chief, Division of Cadastral Survey, BLM, made these comments on the charges of the appellants:

Performance errors by the BLM are alleged by the appellants attorney at the following described section corners:

1. Quarter corner common to Sections 26 and 35.

(a) The claim by the appellants at this corner is that the BLM declared the original corner lost with insufficient weight given to locally established corners and no search was made for "extrinsic" evidence of the original corner. At the approximate location of the quarter section corner of sections 26 and 35, the BLM surveyors found two stone corners, both marked 1/4 on the N. face and fitting the size and description of the original corner. One fell 52 feet (0.79 chs.) and the other fell 57 feet (0.87 chs.) off a direct line between controlling section corners. The conflicting original corner evidence offered by these two similar stones cast a reasonable doubt as to their authenticity. The BLM surveyors therefore rejected both corners and reestablished the quarter corner at midpoint between adjoining section corner in accordance with the original survey record. We are not familiar with the word "extrinsic" when applied to factual evidence of a section corner. Our factual search is limited to physical and collateral evidence of the original corner.

(b) The appellants claim that the new BLM corner is inconsistent with topographic calls of original survey. A good discussion on the unreliability of topographic calls from the old original surveyors' field notes can be found in J. M. Beard (on Rehearing) 52 L.D. 451 (1928).

(c) The appellants claim that the new BLM corner was established by proportionate measurement from a section corner that had itself been established by double proportionate measurement. The procedure used by the BLM surveyors is in full accord with Sections 370 and 372 Manual of Surveying Instructions, 1947. All corners reestablished by proportionate measurement bear the same relationship to each other as did the original corners.

2. South quarter corner Section 35.

The appellants claim that this corner was declared lost with insufficient weight given to a locally established corner and no search for extrinsic evidence of the original corner was made. The quarter section corner position was declared lost and reestablished by the BLM surveyors utilizing single proportionate measurement between identified controlling section corners in accordance with Manual procedures. A locally established corner purported to be the closing corner of Sections 1 and 2, T. 14 S., R. 31 E., WM, was ruled out as factual evidence of the quarter corner of section 35. The 1969 reestablishment of the closing corner point by a local surveyor was accomplished by him even though he had no physical evidence of the original closing corner point on the ground. Extrinsic evidence of the original corner point was not considered for reasons previously stated.

3. Northeast corner Section 26.

The appellants claim that this corner point was declared lost with insufficient weight given to a locally established corner and no search for extrinsic evidence of the original corner was made. The nearest locally established corner to this point is SO degrees 45'E., 20.79 chains away and could not be considered as physical or collateral evidence of the NE corner of Section 26. This corner point was reestablished by double proportionate measurement in accordance with Section 367 of the Manual. Extrinsic evidence of the corner point was not considered for reasons previously stated.

4. Center-west 1/16 section corner Section 26.

The appellants claim that this corner was declared lost with insufficient weight given to a locally established corner, and no search for extrinsic evidence of the original corner was made. The original survey of T. 13 S., R. 31 E., in 1869 did not include the subdivision of Section 26, therefore no corner point had ever been established at the CW 1/16 section corner of Section 26. Apparently a local corner point was established in 1913 at a location purported to be the CW 1/16 section corner. An examination of the location of this local corner

point reveals that it was not established in accordance with procedures set out in Sections 202-210 of the Manual. On page 7 of the letter from the appellant's attorney to the Chief, Division of Cadastral Survey, BLM, dated September 29, 1975, the statement is made that, "The BLM Manual has been recognized by state and federal courts as a proper statement of correct surveying principles." Therefore, the local state and county land surveyor is just as rigidly controlled by the Manual as the BLM surveyor. The BLM is reluctant to honor corners which affect public land boundaries that were obviously not established in accordance with the Manual procedures. Extrinsic evidence of the corner point was not considered for reasons previously stated.

[1] The Secretary of the Interior has the duty to determine what lands are public lands and to extend or correct the surveys of public lands, including the making of resurveys which he deems necessary to properly mark the boundaries of the public lands remaining unsold, provided no such resurvey shall be executed so as to impair the bona fide rights of any owner of lands affected by such resurvey. 43 U.S.C. §§ 752, 772 (1970). See Kirwan v. Murphy, 189 U.S. 35 (1903); Utah Power & Light Company, 6 IBLA 79, 79 I.D. 397 (1972); Stanley G. West, 14 IBLA 26 (1973).

BLM has exclusive jurisdiction over all matters pertaining to surveys and resurveys affecting public lands. Where private owners of land title to which has passed out of the United States are in dispute over land boundaries, local courts of competent jurisdiction will make the final determination.

The retracement and resurvey of the protested survey were made in the manner described in Sections 348-427, 1947 Manual.

[2] Where an original corner is considered to be "lost" because its position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence or testimony bearing on the original position, it can be restored only by reference to one or more interdependent corners. Section 360, 1947 Manual. In the resurvey of section 26, T. 13 S., R. 31 E., W.M., it was necessary to restore the section corner monuments to the northeast and the southeast corners, as well as the quarter-section corners on the east and south section lines, all of which were considered to be "lost." Before proceeding to reestablish these corners, it was necessary for the engineer to reestablish corners on the east and south boundaries of the township. The corners on the township lines were restored by single proportionate method. Section 372 et seq., 1947 Manual. Thereafter, utilizing the reestablished corners on the township lines and other perpetuated or original corners, the "lost"

section corners of section 26 were reestablished by the double proportionate method. Section 367 et seq., 1947 Manual. The quartersection corners of section 26 were then reestablished by the single proportionate method. The interior division of section 26 was accomplished by original surveys from the reestablished section corners and quarter-section corners. Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original survey corner. Henry O. Woodruff, 24 IBLA 190 (1976). Examination of the record does not show that the reestablishment of the "lost" corners was in any way at variance from the specifications set out in the 1947 Manual or in the Special Instructions for this survey.

[3] Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement or reestablishment of the lines of the original survey. Henry O. Woodruff, supra. We are not persuaded by the arguments of appellants that the reestablished corners were incorrectly positioned.

Similarly, we are not persuaded that any meaningful benefit would accrue from a hearing on this matter. The request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joan B. Thompson
Administrative Judge

